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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION  
12

13 UNITED STATES OF AMERICA, ) No. CR-04-40126-DLJ  
14 Plaintiff, )  
15 v. ) PLEA AGREEMENT  
16 MICHAEL ALEXANDER ALLAN, )  
17 Defendant. )  
18

19 I, Michael Alexander Allan, and the United States Attorney's Office for the Northern  
20 District of California (hereafter "the government") enter into this written plea agreement (the  
21 "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal  
22 Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to counts one, two, and four of the captioned indictment  
25 charging me with conspiring (a) to steal explosives, (b) to possess stolen explosives, and (c) to  
26 transport explosives without a license, in violation of Title 18, United States Code, Section 371  
27 (Count One), and two counts of theft of explosives, in violation of Title 18, United States Code,  
28 Section 844(k) (Count Two and Count Four). I agree that the elements of the offense and the

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maximum penalties are as follows:

(1) Count One (Conspiracy)

Elements: (1) there was an agreement to commit at least one crime charged; and (2) defendant became a member of conspiracy knowing of at least one of its objects and intending to help accomplish it.

Maximum penalties:

- |    |                                 |              |
|----|---------------------------------|--------------|
| a. | Maximum prison sentence         | 5 years      |
| b. | Maximum fine                    | \$250,000.00 |
| c. | Maximum supervised release term | 3 years      |
| d. | Mandatory special assessment    | \$100.00     |

(2) Count Two (Theft of Explosives)

Elements: (1) defendant stole; (2) explosive materials; (3) that had moved in interstate or foreign commerce.

Maximum penalties:

- |    |                                 |              |
|----|---------------------------------|--------------|
| a. | Maximum prison sentence         | 10 years     |
| b. | Maximum fine                    | \$250,000.00 |
| c. | Maximum supervised release term | 3 years      |
| d. | Mandatory special assessment    | \$100.00     |

(3) Count Four (Theft of Explosives)

Elements: (1) defendant stole; (2) explosive materials; (3) that had moved in interstate or foreign commerce.

Maximum penalties:

- |    |                                 |              |
|----|---------------------------------|--------------|
| a. | Maximum prison sentence         | 10 years     |
| b. | Maximum fine                    | \$250,000.00 |
| c. | Maximum supervised release term | 3 years      |
| d. | Mandatory special assessment    | \$100.00     |

In sum, I understand that by pleading guilty to each of these counts, the maximum penalties against me could be as follows: 25 years imprisonment; a fine of \$750,000.00; 9 years of

1 supervised release; and \$300.00 in mandatory special assessments.

2 2. I agree that I am guilty of the offenses to which I will plead guilty, and I agree that  
3 the following facts are true:

4 On Friday, July 2, 2004, I drove a stolen van to the Crystal Springs Reservoir area in San  
5 Mateo County. Using bolt cutters, I cut the locks off one of the entrance gates and drove into the  
6 reservoir area. I found several structures that looked like storage sheds, which I now know to be  
7 "explosives magazines," or locations where explosives are stored. I used the bolt cutters to cut  
8 the locks off two of the magazines, and I stole the explosives, put them in the van, and left. At  
9 that time, I could not break through the locks on the remaining magazines. Subsequently, I met  
10 with my friend Dean Utile, and we agreed to return to the reservoir area to break into the  
11 remaining magazines and steal their contents.

12 On Monday night, July 5, 2004, Mr. Utile and I drove a different stolen van to the  
13 reservoir area. We brought a blow torch and an oxygen tank, and we used them to cut through  
14 the remaining locks that I had not been able to cut through on July 2. We loaded the remaining  
15 explosives into the van and returned to the storage unit in Hayward. Determining it was too full,  
16 we arranged to use an acquaintance's storage unit in Oakland. We took the explosives there and  
17 stored them. I understand and agree that the explosives we stole, possessed, and transported  
18 included C4, grenades, grenade simulators, detonation cord, dynamite, fuses, and blasting caps. I  
19 also understand and agree that at least some of these explosive materials, such as the C4, the  
20 Hercules brand blasting caps, and the grenade simulators, had been manufactured outside the  
21 state of California.

22 I understand and agree that the total weight of the explosive materials I stole, possessed,  
23 and transported exceeded 25 pounds but was less than 500 pounds.

24 Finally, I admit that I committed the offenses to which I am pleading guilty while I was  
25 on probation or parole from another offense.

26 3. I agree to give up all rights that I would have if I chose to proceed to trial,  
27 including the rights to a jury trial with the assistance of an attorney; to confront and cross-  
28 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise

1 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and  
2 to pursue any affirmative defenses and present evidence. To the extent that I have a right to have  
3 facts that are used to determine the sentence (including any Sentencing Guideline factors, upward  
4 adjustments, or upward departures) charged in the indictment by the grand jury and found by a  
5 jury at trial beyond a reasonable doubt (see Blakely v. Washington, 124 S. Ct. 2531 (2004)), I  
6 waive those rights and agree that the Court will find the facts that enhance my sentence by a  
7 preponderance of the evidence.

8 4. I agree to give up my right to appeal my convictions, the judgment, and orders of  
9 the Court. I also agree to waive any right I may have to appeal my sentence, unless the Court  
10 finds my adjusted offense level to be greater than level 21.

11 As to any matter in which I am cooperating with the government pursuant to this  
12 agreement, I waive any right I may have to assert the attorney-client privilege to decline to  
13 answer questions relating to communications with counsel for any other defendant including a  
14 defendant acting pro se, except as to communications where counsel for the other defendant was  
15 my attorney of record. I also waive my right to conflict-free representation by any attorney or  
16 pro se defendant where a conflict arises from that attorney's or defendant's participation in a  
17 joint defense agreement to which I also was a party.

18 5. I agree not to file any collateral attack on my convictions or sentence,  
19 including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except  
20 for a claim that my constitutional right to the effective assistance of counsel was violated.

21 6. I agree not to ask the Court to withdraw my guilty pleas at any time after they  
22 are entered.

23 7. I agree that I will make a good faith effort to pay any fine, forfeiture, or  
24 restitution I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the  
25 government, or the U.S. Probation Office, provide accurate and complete financial information,  
26 submit sworn statements and give depositions under oath concerning my assets and my ability to  
27 pay, surrender assets I obtained as a result of my crimes, and release funds and property under my  
28 control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessments at

1 the time of sentencing.

2 8. I agree to cooperate with the U.S. Attorney's Office before and after I am  
3 sentenced. My cooperation will include, but will not be limited to, the following:

- 4 a. I will respond truthfully and completely to any and all questions put to me,  
5 whether in interviews, before a grand jury or at any trial or other proceeding;  
6 b. I will provide all documents and other material asked for by the government;  
7 c. I will testify truthfully at any grand jury, court or other proceeding as  
8 requested by the government;  
9 d. I will surrender any and all assets acquired or obtained directly or indirectly as  
10 a result of my illegal conduct;  
11 e. I will request continuances of my sentencing date, as necessary, until my  
12 cooperation is completed;  
13 f. I will tell the government about any contacts I may have with any  
14 co-defendants or subjects of investigation, or their attorneys or individuals  
15 employed by their attorneys; and  
16 g. I will not reveal my cooperation, or any information related to it, to anyone  
17 without prior consent of the government.

18 9. I agree that the government's decision whether to file a motion pursuant to  
19 U.S.S.G. § 5K1.1, as described in the government promises section below, is based on its sole  
20 and exclusive decision of whether I have provided substantial assistance, and that decision will  
21 be binding on me. I understand that the government's decision whether to file such a motion, or  
22 the extent of the departure recommended by any motion, will not depend on whether convictions  
23 are obtained in any case. I also understand that the Court will not be bound by any  
24 recommendation made by the government.

25 10. I agree not to commit or attempt to commit any crimes before sentence is  
26 imposed or before I surrender to serve my sentence; not to violate the terms of my pretrial release  
27 (if any); not to intentionally provide false information or testimony to the Court, the Probation  
28 Office, Pretrial Services, or the government; and not to fail to comply with any of the other  
promises I have made in this Agreement. I agree that, if I fail to comply with any promises I  
have made in this Agreement, then the government will be released from all of its promises, but I  
will not be released from my guilty pleas.

1           11. If I am prosecuted after failing to comply with any promises I made in this  
2 Agreement, then (a) I agree that any statements I made to any law enforcement or other  
3 government agency or in Court, whether or not made pursuant to the cooperation provisions of  
4 this Agreement, may be used in any way; (b) I waive any and all claims under the United States  
5 Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal  
6 Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my  
7 statements, or any leads derived from those statements; and (c) I waive any defense to any  
8 prosecution that it is barred by a statute of limitations, if the limitations period has run between  
9 the date of this Agreement and the date I am indicted.

10           12. I agree that this Agreement contains all of the promises and agreements  
11 between the government and me, and I will not claim otherwise in the future.

12           13. I agree that this Agreement binds the U.S. Attorney's Office for the Northern  
13 District of California only, and does not bind any other federal, state, or local agency.

14 The Government's Promises

15           14. The government agrees to move to dismiss any open charges pending against  
16 the defendant in the captioned indictment at the time of sentencing.

17           15. The government agrees not to file or seek any additional charges against the  
18 defendant that could be filed as a result of the investigation that led to the pending indictment.

19           16. The government agrees not to use any statements made by the defendant  
20 pursuant to this Agreement against him, unless the defendant fails to comply with any promises  
21 in this agreement. The government may, however, tell the Court and the U.S. Probation  
22 Department about the full extent of the defendant's criminal activities in connection with the  
23 calculation of the Sentencing Guidelines.

24           17. If, in its sole and exclusive judgment, the government decides that the  
25 defendant has cooperated fully and truthfully, provided substantial assistance to law enforcement  
26 authorities within the meaning of U.S.S.G. § 5K1.1, and otherwise complied fully with this  
27 Agreement, it will file with the Court a motion under § 5K1.1 and/or 18 U.S.C. § 3553 that  
28 explains the nature and extent of the defendant's cooperation and recommends a downward

1 departure.

2 18. Based on the information now known to it, the government will not oppose a  
3 downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1.

4 The Defendant's Affirmations

5 19. I confirm that I have had adequate time to discuss this case, the evidence, and  
6 this Agreement with my attorney, and that she has provided me with all the legal advice that I  
7 requested.

8 20. I confirm that while I considered signing this Agreement and, at the time I  
9 signed it, I was not under the influence of any alcohol, drug, or medicine.

10 21. I confirm that my decision to enter a guilty plea is made knowing the charges  
11 that have been brought against me, any possible defenses, and the benefits and possible  
12 detriments of proceeding to trial. I also confirm that my decision to plead guilty is made  
13 voluntarily, and no one coerced or threatened me to enter into this agreement.

14 Dated: November \_\_, 2004

15 MICHAEL ALEXANDER ALLAN  
16 Defendant

17 KEVIN V. RYAN  
18 United States Attorney

19 Dated: November \_\_, 2004

20 W. DOUGLAS SPRAGUE  
21 Assistant United States Attorney

22 I have fully explained to my client all the rights that a criminal defendant has and all  
23 the terms of this Agreement. In my opinion, my client understands all the terms of this  
24 Agreement and all the rights he is giving up by pleading guilty, and, based on the information  
25 now known to me, his decision to plead guilty is knowing and voluntary.

26 Dated: November \_\_, 2004

27 JOYCE LEAVITT  
28 Attorney for Defendant